

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.08.2016

PRONOUNCED ON: 04.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.21805 of 2016 & W.M.P. No.18649 of 2016

Lalitha Gowrinath

... Petitioner

vs.

1 The Commissioner of Police
E.V.K. Sampath Salai
Egmore, Chennai 600 008

2 The Joint Commissioner of Police (South)
St. Thomas Mount
Chennai 600 016

3 The Inspector of Police (L & O)
S-13, Chromepet Police Station
Chromepet
Chennai 600 044

4 Leela Balathandapani

5 Rashika

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents, their men and subordinates not to disturb the petitioner in any manner pertaining to her construction activities at Door No.5, 12th Cross Street, New Colony, Chromepet, Chennai 600 044 and directing the respondents to pay compensation of Rs.50,000/- towards the damages incurred by the petitioner from the third respondent police.

For petitioner Mr. S.L. Sudarsanam

For RR 1 to 3 Mr. C. Emalias, Addl. Public Prosecutor

For RR 4 & 5 Mr. B. Vijay

ORDER

This writ petition has been filed seeking a writ of mandamus forbearing the respondents, their men and subordinates from disturbing the petitioner in any manner pertaining to her construction activities at Door No.5, 12th Cross Street, New Colony, Chromepet, Chennai - 600 044 and further, directing the respondents to pay compensation of Rs.50,000/- towards the damages incurred by the petitioner from the third respondent police.

2 For the sake of convenience, the parties will be referred to by their name.

3 It is the case of Lalitha Gowrinath, the petitioner herein, that she is the absolute owner of the property bearing Door No.5, 12th Cross Street, New Colony, Chromepet, Chennai - 44 and that she had obtained planning permission on 22.04.2016 from Pallavaram Municipality for constructing an additional floor in her property. On 29.04.2016, she had made arrangements for Bhoomi Puja as a prelude to the commencement of construction and on that date, the Inspector of Police, S13, Chromepet Police Station asked her to stop the construction, on account of which, she had incurred loss of Rs.50,000/- and hence, she has preferred the present writ petition seeking the aforesated relief. Along with the writ petition, Lalitha Gowrinath has also filed W.M.P. No.18649 of 2016, seeking an order of interim injunction restraining the third respondent police from interfering with her construction activities, except by due process of law.

4 When the writ petition was taken up for admission, this Court perused the affidavit and observed that Lalitha Gowrinath has referred to a dispute with one Leela Balathandapani in paragraph 8 of her affidavit. But, strangely, the said Leela Balathandapani was not impleaded as a party respondent.

5 Mr. S.L. Sudarsanam, learned counsel for Lalitha Gowrinath submitted that no relief is claimed against Leela Balathandapani and therefore, she is not a necessary party and the relief claimed is only against the Inspector of Police, who is said to have orally instructed Lalitha Gowrinath not to commence construction.

6 When this Court expressed its view that it will be in the interest of justice to hear Leela Balathandapani, Lalitha Gowrinath filed W.M.P. No.19851 of 2016 to implead Leela Balathandapani and Rashika as respondents 4 and 5 only in the

main writ petition, but, insisted upon this Court to grant interim orders in the miscellaneous petition without hearing Leela Balathandapani. But, this Court found that if the interim prayer, as prayed for, is granted, it is tantamount to passing final orders in the main writ petition itself. Since this Court felt something hanky-panky with the case of Lalitha Gowrinath, this Court suo motu impleaded Leela Balathandapani and her daughter Rashika as respondents 4 and 5, both in the main writ petition and also in the injunction petition and ordered notice to the proposed respondents.

7 On notice, Leela Balathandapani and Rashika entered appearance.

8 The Inspector of Police, S-13, Chromepet Police Station, filed counter affidavit about which this Court shall discuss a little later.

9 Mr. S.L. Sudarsanam, learned counsel for Leela Gowrinath has filed written arguments. This Court gave its anxious consideration to the rival submissions.

10 Leela Balathandapani has filed counter affidavit, wherein, it is averred that Lalitha Gowrinath and Leela Balathandapani are blood sisters; their father P.Satyanarayana, was the absolute owner of the land and building situate at No.5, 12th Cross Street, New Colony, Chromepet, Chennai - 44; he executed two wills, both dated 26.06.2009 and had them registered before the Sub-Registrar, Pallavaram; he divided the property in Door No.5 into two portions and bequeathed the eastern portion to Leela Balathandapani and the western portion to Lalitha Gowrinath. Both the wills have the following recital:

"However, the entire building shall be maintained as of now condition till the lifetime of both the daughters of the testator, namely, Mrs. Leela Balathandapani and Mrs. Lalitha Gowrinath, whether they physically enjoy it or put anybody else to enjoy and till such time, they can continue to enjoy their respective portions."

11 As per the recitals in the wills executed by P. Satyanarayana, Lalitha Gowrinath and Leela Balathandapani will have only life estate in their shares and after their demise, the property will go only to their children. P. Satyanarayana is no more and now, both the sisters, viz. Lalitha Gowrinath and Leela Balathandani are living in their respective portions in the said property.

12 At this juncture, this Court is constrained to observe that in all fairness, Lalitha Gowrinath should have brought all these facts to the notice of this Court in her affidavit. Rather, she has made a false averment in the affidavit that she is the absolute owner of the property bearing Door No.5, 12th Cross Street, New Colony, Chromepet, Chennai - 44, when the fact remains that she owns only the western portion of the said property and the eastern portion of the property belongs to Leela Balathandapani. It is also pertinent to point out that their father has also prohibited them from making any further construction in the property in question. While so, it is the apprehension of Leela Balathandapani that if Lalitha Gowrinath puts up additional construction, then, her (Leela Balathandapani's) portion of the property will be subject to heavy damage and that is why, she has been making a hue and cry, which is indeed justifiable.

13 The learned counsel for Lalitha Gowrinath submitted that Lalitha Gowrinath had obtained planning permission from Pallavaram Municipality for putting up construction in such a manner that it will not, in any way, be a hindrance to Leela Balathandapani.

14 This Court cannot go into all these aspects in a writ petition. The affidavit of Lalitha Gowrinath does not even refer to Leela Balathandapani as her blood sister and does not recognise the fact that Leela Balathandapani is living in the same building.

15 When this Court questioned the learned counsel for Lalitha Gowrinath, he submitted that he has enclosed several documents in the typed set of papers which will show that Leela Balathandapani is the sister of Lalitha Gowrinath and that she is also living in that property, etc.

16 In the considered opinion of this Court, this is an argument in desperation. In an Admission Court, it is normal practice for the Court to go through the sworn affidavit and to either refuse or grant interim orders, depending upon the facts narrated therein. As stated above, a reading of the affidavit filed by Lalitha Gowrinath does not disclose any of the facts and it proceeds on the footing that Lalitha Gowrinath is the absolute owner of the property and one stranger Leela Balathandapani is using police to prevent her from putting up a legitimate construction.

17 Coming to the counter affidavit of the Inspector of Police, in paragraphs 3 and 4, it is stated as follows:

"3. It is submitted that on 29.04.2016, the Control room has received the police call 100 from the 5th respondents at various times i.e. 16.54.30 hours, 17.00.14 hours and 17.00.23 hours and stated that "Land problem some persons fighting disturbance in this place need police help".

4. It is submitted that based on the information of the Control room, on 29.04.2016 at 17.05.45 hours, the third respondent police consisting one Special Sub Inspector of Police and Patrol Vehicle Driver have visited the 5th respondent's address i.e. Tmt. Leela Balathandapani, No.5, 12thCross Street, New Colony, Chromepet. The said police officer has enquired the 5th respondent; it reveals that the civil disputes between the petitioner and 5th respondent. Hence, the said police officer has directed the 5th respondent and the petitioner - Tmt. Lalitha Gowrinath not to create law and order problems."

18 It should be remembered that election to the Tamil Nadu Legislative Assembly was scheduled to be held on 16.05.2016 and it is common knowledge that the police throughout the State, were kept under vigil to immediately attend to any call to the control room. Further, the Inspector of Police has produced the entire call docket records from the control room which show the number of calls that have been received by the control room from Leela Balathandapani, which the police had to necessarily attend. The Inspector of Police has denied Lalitha Gowrinath's allegation that he had orally instructed her to stop the construction. On the contrary, when Lalitha Gowrinath was called for enquiry, she has given a written statement to the police stating that she had wanted to install only CCTV cameras which was being objected to by Leela Balathandapani. The letter dated 09.05.2016 given by Lalitha Gowrinath to that effect finds place in page no.13 of the typed set of papers.

19 In the typed set of papers filed by Lalitha Gowrinath, she has enclosed a letter dated 30.04.2016 addressed to the Inspector of Police, wherein, she has referred to a pending suit in O.S. No.183 of 2016.

20 The learned Additional Public Prosecutor submitted that the police have not received the letter dated 30.04.2016. Even assuming for a moment that Lalitha Gowrinath has indeed given

the letter dated 30.04.2016 to the Inspector of Police, it does not, in any way, improve her case. In the letter dated 30.04.2016, Lalitha Gowrinath has referred to O.S. No.183 of 2016 and has averred that she will not cause any damage to the suit property and that she will continue with the construction work without disturbing Leela Balathandapani.

21 Mr. Sudarsanam, learned counsel, contended that on the strength of the aforesaid undertaking given by Lalitha Gowrinath, the police should have permitted her to go ahead with the construction work. This argument of Mr. Sudarsanam is built upon the presupposition that police had prevented Lalitha Gowrinath from going ahead with the construction work, whereas, the affidavit filed by the Inspector of Police clearly states that he had called both the parties to the police station, pursuant to the calls made by Leela Balathandapani to the control room and directed them not to create law and order problem. When a suit in O.S. No.183 of 2016 is pending between the parties, an innocuous order by this Court in writ jurisdiction under Article 226 of the Constitution of India injuncting the police from preventing Lalitha Gowrinath from going ahead with the construction will be clearly misinterpreted as a green signal by this Court to Lalitha Gowrinath to proceed with the construction. This Court cannot be entrapped with such seemingly innocuous prayers. This Court has no reason to disbelieve the contention of the Inspector of Police, especially, when there are sufficient materials to show that Lalitha Gowrinath has not come to this Court with clean hands.

22 In the considered opinion of this Court, Lalitha Gowrinath is attempting to create a smokescreen as if police had prevented her from going ahead with the construction work and therefore, she has come up with the prayer for an order of interim injunction restraining the police from interfering with her construction and also demanding Rs.50,000/- as compensation from the police. On the other hand, for having suppressed so much of facts and not impleading Leela Balathandapani at the first instance itself, Lalitha Gowrinath should pay exemplary costs.

23 In view of the foregoing discussion, this Court is of the considered view that this writ petition is devoid of merits and liable to be dismissed.

Accordingly, this writ petition stands dismissed. Costs made easy. Connected W.M.P. is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1 The Commissioner of Police
E.V.K. Sampath Salai
Egmore, Chennai 600 008
 - 2 The Joint Commissioner of Police (South)
St. Thomas Mount
Chennai 600 016
 - 3 The Inspector of Police (L & O)
S-13, Chromepet Police Station
Chromepet
Chennai 600 044
 - 4 The Public Prosecutor
High Court of Madras
Chennai 600 104
- +1cc to M/s.S.L.Sudharsan, Advocate SR.No.56921
+1cc to M/s.T.B.Vijay, Advocate SR.NO.57255

SDR 22.10.2016

सत्यमेव जयते W.P. No.21805 of 2016

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